they do not. The following cases sustain this view: *Bondeau* v. *Sheridan*, 81 Mo. 545; *Carter* v. *Denman*, 23 N. J. L. 260; *Salmon* v. *Vallejo*, 41 Cal. 481; *Dale* v. *Shively*, 8 Kans. 276; *Moore* v. *Merril*, 17 N. H. 75, 43 Am. Dec. 593; *Guerin* v. *Smith*, 62 Mich. 369, 28 N. W. Rep. 906; *Marbury* v. *Thornton*, 82 Va. 702, 1 S. E. Rep. 909; *Sayre* v. *Sheffield, etc. Coal Co.*, 106 Ala. 440, 18 So. 101. See also WILLARD ON REAL ESTATE, 413. The foundation for the above holdings is the fact that choses in action are not assignable at common law. There are a number of courts in the United States that follow what is known as the American doctrine. These courts hold that, since covenants against incumbrances are entered into for the sole purpose of protecting the title and also since the statutes in most of the states have made choses in action assignable, the reason for restricting the right of action for the breach of such covenants to the immediate grantee is without foundation; especially when permitting the remote grantor to be sued will prevent a multiplicity of suits. *McCrady* v. *Brisbane*, 1 Nott. and McCord (S. C.) 104; *Gieszler* v. *DeGraaf* (1901), 166 N. Y. 339, 82 Am. S. Rep. 335; *Kimball* v. *Bryant*, 25 Minn. 496; *Foote* v. *Burnette*, 10 Ohio 317, 36 Am. D. 90; *Martin* v. *Baker*, 5 Blackf. (Ind.) 232; *Mecklem* v. *Blake*, 22 Wis. 495; *Knadler* v. *Sharpe*, 36 Ia. 232; *Cole* v. *Kimball*, 52 Vt. 639; RAWLE ON COV. OF TITLE, sec 211.

FALSE IMPRISONMENT—RIGHTS OF FINDER OF LOST ARTICLES—PUNITIVE DAMAGES WHERE INJURY NOMINAL.—Defendant company maintained open-air amusement grounds. All parts of the grounds were free to the public except an open-air theatre fenced off from the residue. Plaintiff visited the grounds and attended the performance at the theater. At the close of the performance, he sat down at a refreshment table, of which there were many scattered about the grounds, and while doing so he found a purse lying on the ground. He went immediately to the ticket office for the purpose of leaving the purse there, but found it closed. A waiter, employed by the company, asked plaintiff what he wanted and plaintiff explained to him. The waiter thereupon asserted that he was the proper person with whom to leave the purse. While he was talking another servant of the company appeared, who insisted that he was the proper custodian, and finally another servant claiming to be the manager, appeared and demanded that it be left with him. Plaintiff replied to them all that he did not know any of them but would deliver the purse only to the ticket office or a uniformed police officer. The three men insisted and "became violent, abusive and profane in their language to him and thereby attracted a large crowd." After detaining him some time and refusing to comply with his request to get the ticket office open or to bring a police officer, the manager ordered the others to arrest plaintiff. He was taken across the grounds, roughly handled, until a policeman was found to whom plaintiff surrendered the purse, but who refused to take plaintiff into custody although the manager demanded that he do so. In an action against the company and the manager, the trial court charged the jury that the company had not only the right but the duty to exercise reasonable care in restoring lost articles, that the manager's request that the purse be delivered to him for that purpose was reasonable, and that they had a lawful right to eject plaintiff from the premises for his refusal and in so doing could use such force as was necessary. The jury rendered a verdict for the plaintiff, giving him no compensatory damages but awarding him one cent punitive damages. On appeal, *Held*, that the instruction was wrong, and that under the undisputed facts, plaintiff was entitled to have actual damages, in some amount, assessed in his favor. Judgment reversed. *Hoagland* v. *Forest Park Highlands Amusement Co.* (1902), — Mo. —, 70 S. W. Rep. 878.

All of the authorities hold, said the court, that the finder of a lost chattel is entitled to its possession as against all other persons except the true owner: DARLINGTON PERS. PROP., 35-37; *Hamaker* v. *Blanchard*, 90 Pa. 377, 35 Am. Rep. 664; *Bowen* v. *Sullivan*, 62 Ind. 281, 30 Am. Rep. 172; *Durfee* v. *Jones*, 11 R. I. 588, 23 Am. Rep. 528. But money or other property voluntarily laid down and forgotten is not, in legal contemplation, lost, and the owner of the shop, bank or other place where it is left, is the proper custodian, rather than the person who happens to discover it, as against all persons other than the true owner: *State* v. *McCann*, 19 Mo. 249; *Lawrence* v. *State*, 1 Humph. (Tenn.) 228, 34 Am. Dec. 644; *McAvoy* v. *Medina*, 11 Allen (Mass.) 549, 87 Am. Dec. 733; *Kincaid* v. *Eaton*, 98 Mass. 139, 93 Am. Dec. 142. In this case, however, it is clear that the purse was lost and not simply forgotten, and therefore the latter rule does not apply.

"It is claimed that the judgment should be reversed upon the ground that the jury, by their verdict, gave the plaintiff no compensatory damages, while they assessed in his favor punitive or exemplary damages at one cent. It is held in 1 SUTH. DAM. § 406, and in *Kiff* v. *Youmans*, 86 N. Y. 324, 40 Am. Rep. 543; *Stacey* v. *Publishing Co*, 68 Me. 279; *Freese* v. *Tripp*, 70 Ill. 499; *Maxwell* v. *Kennedy*, 50 Wis. 648, 7 N. W. 657; *Jones* v. *Matthews*, 75 Tex. 1, 12 S. W. 823; *Trawick* v. *Martin-Brown Co.*, 79 Tex. 466, 14 S. W. 564; *Schippel* v. *Norton*, 38 Kan. 567, 16 Pac. 804; *Kuhn* v. *Railway Co.*, 74 Iowa 137, 37 N. W. 116; and *Mills* v. *Taylor*, 85 Mo. App. 111,—that actual damages must be found as a predicate for the recovery of exemplary damages. The verdict, therefore, seems to be inconsistent with itself, for when no actual damage has been sustained, as found by the jury in the case at bar, no exemplary damages can be allowed, nor can exemplary damages constitute the basis of a cause of action, for they are mere incidents to it, and, when given, they are not given upon any theory that the plaintiff has any just right to recover them, but are given only upon the theory that the defendant deserves punishment for his wrongful acts, and that it is proper for the public to impose them upon the defendant as punishment for such wrongful acts in the private action brought by the plaintiff for the recovery of the real and actual damages suffered by him. No right of action for exemplary damages, however, is ever given to any private individual who has suffered no real or actual damages. He has no right to maintain an action merely to inflict punishment upon some supposed wrongdoer. If he has no cause of action independent of a supposed right to recover exemplary damages, he has no cause of action at all. *Schippel* v. *Norton*, 38 Kan. 567, 16 Pac. 804. [But see 1 MICHIGAN LAW REVIEW, 61]. In *Courtney* v. *Blackwell*, 150 Mo. 245, 51 S. W. 668, the court instructed the jury on the question of exemplary damages as follows: 'If the jury find for the plaintiff, and further find that plaintiff is entitled to exemplary damages, under the evidence in the case,' their verdict should be in the following form: 'We, the jury, find for the plaintiff, and assess and award to her as exemplary damages the sum of —— dollars.' The jury did find for plaintiff, and did assess and award to her as exemplary damages the sum of $7,750, but made no finding with respect to compensatory damages. The court said: 'The jury did find for the plaintiff, and, in so doing, found that the defendant had published the slander with which he was charged; and upon that finding the plaintiff was entitled to have actual damages asessed in her favor, the slander being of that character from which the law implies such damages. They also found, as is apparent on the face of the verdict, when read in connection with the instructions, that the slander had been wantonly and maliciously published, and it was also within their province to assess exemplary damages therefor in her favor. So that there was in fact a basis, under the instructions, for the assessment of both actual and exemplary damages. But by some

mischance in the form of the verdict which was given to the jury, no place was left therein for the separate assessment of the actual damages, and the whole was returned in a lump sum, according to the form as exemplary damages. This was an error of form, and not of substance; and as, under the facts and circumstances of the case, the assessment was reasonable and just, we do not think the judgment ought to be reversed for this error.' But the case at bar is distinguishable from that case in this: In that case the jury made no finding at all in regard to actual or compensatory damages, while in the case at bar they expressly found that plaintiff was entitled to recover, and that he had sustained no compensatory damages, but assessed punitive or exemplary damages at one cent. The jury, in finding for plaintiff, in effect found that defendants arrested the plaintiff, and cursed and abused him, without any lawful excuse or reason therefor; and upon that finding he was entitled to have actual damages, in some amount, assessed in his favor. Under such circumstances, at the common law he is entitled to pecuniary reparation by way of damages, at least nominal, and as much more, if anything, as the jury may think him entitled to under the evidence."

FRAUDULENT CONVEYANCE—JUDGMENT LIENS.—A debtor conveyed land to defraud his creditors, the vendee being an actual party to the fraud. After the conveyance a creditor of the grantor obtained judgment against him and sold the land so conveyed under an execution. Neither the vendee at the execution sale nor the judgment creditor began any equitable proceedings to have the fraudulent conveyance set aside within six years. *Held*, that the title of the fraudulent grantee is protected by the statute of limitation, and unless a cancellation of the fraudulent conveyance is effected within six years from the discovery of the fraud, his title becomes absolute and unassailable. *Brasie* v. *Minneapolis Brewing Co.* (1902), — Minn. —, 92 N. W. Rep. 340.

That the creditor's judgment is not a legal lien on the land of a debtor who has made a prior fraudulent conveyance thereof, and therefore the legal title does not pass to the purchaser by a sale on execution, but simply an equitable right, is maintained in *Lyon* v. *Robbins*, 46 Ill., 279; *Doster* v. *Bank*, 67 Ark. 325, 55 S. W. 137, 48 L. R. A. 334, 77 Am. St. Rep. 116; *Hallorn* v. *Trum*, 125 Ill., 247, 17 N. E. 823; *Howland* v. *Knox*, 59 Iowa, 46, 12 N. W. 777; *George* v. *Williamson*, 26 Mo. 190, 72 Am. Dec., 203; *Miller* v. *Sherry*, 2 Wall., 237, 17 Law. ed. 830. Other courts hold that a sale of land under execution on a judgment rendered after a fraudulent conveyance by the debtor vests the legal title, not a mere equitable right in the purchaser. *Wagner* v. *Law*, 3 Wash., 500, 15 L. R. A. 784; *Bank* v. *Biskey*, 19 N. Y. 369, 75 Am. Dec. 347; *Smith* v. *Reid*, 134 N Y. 568, 31 N. E. 1082; *Thomson* v. *Neeley*, 50 Miss. 310; *Foley* v. *Ruley*, 50 W. Va. 158, 40 S. E. 382, 55 L. R. A. 916. But in Oregon a judgment is not a lien upon the land which the debtor purchases with his own money in a son's name for the purpose of defrauding his creditors. *Smith* v. *Ingles*, 2 Or. 43. There is ample authority for holding that a judgment creditor may proceed to sell land previously conveyed by the debtor in fraud of his creditors without first filing any bill to remove the cloud from such conveyance. *Wyman* v. *Richardson*, 63 Me. 293; *Bank* v. *Risley*, 19 N. Y. 369, 75 Am. Dec. 347; *Pratee* v. *Mathews*, 53 Miss. 140; *Eastman* v. *Schettler*, 13 Wis. 362; *Fowler* v. *Trebein*, 16 Ohio St. 493, 91 Am. Dec. 95. But there is much confusion in the law as to priority of judgments when a junior judgment creditor is first to institute equitable proceedings to set the fraudulent conveyance aside; some hold that such judgment creditor takes precedence, others that they come in the order of the judgments obtained.